LIM BOON PENG

v.

UNITED ORIENT LEASING CO. BHD.

SUPREME COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
MOHD. AZMI SCJ
GUNN CHIT TUAN SCJ
[SC CIVIL APPEAL NO. 02-54-1990]
23 NOVEMBER 1990

BANKRUPTCY: *Specified sum in body of notice - Unspecified sum appended - Latter waived - Whether must be quantified - Correct sum owing as at date of notice - Validity of notice - Clear and unequivocal - Whether fatal defect - Interest on judgment debt - Maximum quantified sum or any lesser sum.*

In the body of a bankruptcy notice dated 8 June 1988 and issued on 8 June 1988, the respondent (judgment creditor) JC had demanded a specified sum of RM47,449.45 comprising interest claimed from 1 December 1986 to 31 March 1988 (at different rates); as for the period after 31 March 1988, an unspecified sum was claimed and was appended to the bankruptcy notice - this claim for the unspecified sum was waived by JC at the hearing of JC's petition. A receiving and adjudicating order was made against the appellant.

The question in this appeal was whether a sum lesser than the amount that should be actually owing as at the date of the issue of the notice, was an incorrect sum which affects the validity of the notice?

Held:

[1] (a) The bankruptcy notice was clear and unequivocal and therefore was not bad in law.

(b) The fact that other information was given in the notice would not render the notice bad in law, so long as the amount demanded for payment within the seven days had been quantified and was unequivocal.

[2] Even if the unspecified sum on further interest had not been waived by the JC, the bankruptcy notice would have remained valid, since the unspecified sum was never included in the amount claimed in the body of the bankruptcy notice.

[3] In the present case, the quantified sum demanded for payment within seven days (up to 31 March 1988), though less than the amount actually owing on the date of issue of the bankruptcy notice (8 June 1988), was not a fatal defect.

[4] Where it would be possible to quantify the interest due up to the date of the issue of the bankruptcy notice, the solicitors for JC in the preparation of the notice, could claim for their clients the quantified maximum sum in advance. However, if they elected for some reason to claim for a lesser sum, or where it is not possible to quantify the maximum sum, it could not by itself render the bankruptcy notice bad in law for the simple reason that it could not possibly affect the correctness of the sum actually owing as at the date of issue of the bankruptcy notice.

[5] As far as interest on judgment debt is concerned, the correct sum owing as at the date of issue of the bankruptcy notice could either be the maximum quantified sum or any lesser sum that existed at an earlier date as a judgment debt and available for bankruptcy purposes.

[Appeal dismissed.]

Cases referred to:
Low Mun v. Chung Khiaw Bank Ltd. [1987] CLJ (Rep) 172
Ghazali bin Mat Noor v. Southern Bank Berhad & 4 Ors. [1989] 2 MLJ 142

Legislation referred to:
Bankruptcy Act 1967, s. 3(1)(i)

For the appellant - S.A. Lingam; M/s. S.A. Lingam & Co.
For the respondent - Benjamin Dawson; M/s. Nik Hussain & Partners

JUDGMENT

Mohd. Azmi SCJ:

This was an appeal against the decision of Anuar J given at Kuala Lumpur on 8 February 1990, whereby the Court made a receiving and adjudicating order against the appellant.

The only ground of appeal was that the bankruptcy notice dated 8 June 1988 and issued on the same date by registration No. 3881 of 1988, was invalid and a nullity *ab initio*, and consequently the creditor's petition should have been struck out. Both here and in the Court below, the appellant relied on the decision of this Court in *Low Mun v. Chung Khiaw Bank Ltd.* [1987] CLJ (Rep) 172 which held that the demand for payment in the notice must not only be quantified but also be the correct sum owing as at the date of notice. The learned Judge considered the authority, and found that it did not assist the judgment debtor.

In the body of the bankruptcy notice, the judgment creditor (respondent) had demanded payment within 7 days, a specified sum of RM47,449.45 cts. In the paragraph between the date of the bankruptcy notice (8 June 1988) and the date of issue, the following particulars were supplied to show how the claim was arrived at:

Judgment sum	RM40,992.64
Add: Interest at 0.065% per day on the sum of RM33,215 from 1 December 1986 to 28 May 1987 (179 days)	RM 3,864.57
Add: Interest at the rate of 8% per annum on the sum of RM33,215 from 29 May 1987 to 31 March 1988 (308 days)	RM 2,242.24
Add: Cost	RM 350.00
Amount owing as at 31 March 1988	RM47,449.45

As for the period after 31 March 1988 the following further particulars of unspecified sum on interest were appended:

> Plus further interest thereon at the rate of 8% per annum on the sum of RM33,215 from 1 April 1988 to date of full realisation or date of adjudicating and/or receiving orders.

According to the learned Judge in his grounds of judgment, on the date when the creditor's petition was heard, he had allowed an application by Counsel for the creditor to waive the claim for interest after 31 March 1988, thereby limiting the demand on payment of interest only up to that date.

In our view, any reasonable person reading the bankruptcy notice should be left in no doubt at all that the amount which the appellant had to pay to avoid the commission of an act of bankruptcy under s. 3(1)(i) of the Bankruptcy Act 1967, was the quantified sum of

RM47,449.45 cts. There was no room for dispute that on 8 June 1988, the said sum claimed in the body of the bankruptcy notice was capable of being made the subject of execution. The notice was clear and unequivocal. We were therefore unable to appreciate the argument of Counsel for the appellant that the bankruptcy notice was bad in law. The fact that other information was given in the notice would not render the notice bad in law, so long as the amount demanded for payment within the seven days had been quantified and was unequivocal. We were of the view that even if the unspecified sum on further interest from 1 April 1988 had not been waived or abandoned by the judgment creditor, the bankruptcy notice would have remained valid, since the unspecified sum was never included in the amount claimed in the body of the bankruptcy notice.

Much had been said about the requirement that the amount quantified in the body of the notice must be the correct sum owing as at the date of the bankruptcy notice. The question in this appeal was, was a sum less than the amount that should be actually owing as at the date of the issue of the notice, an incorrect sum for the validity of the notice? Obviously not. It could be a lesser amount than the sum actually owing and capable of being made the subject of execution at the date of issue of the notice. In the present case, the quantified sum demanded for payment within seven days (up to 31 March 1988), though less than the amount actually owing on the date of issue of the bankruptcy notice (8 June 1988), was not a fatal defect. Where the date of issue of the notice by the Registrar is the same as the date named in the notice by the creditor, which is the case here, then the maximum amount of interest accruing due that the judgment creditor could possibly quantify in the body of the bankruptcy notice was obviously the amount owing as at the date of issue of the notice. This is envisaged by this Court in *Ghazali bin Mat Noor v. Southern Bank Berhad and four Ors.* [1989] 2 MLJ 142 at 143. In our opinion, where it would be possible to quantify the interest due up to the date of the issue of the bankruptcy notice, the solicitors for the judgment creditor in the preparation of the notice, could claim for their clients the quantified maximum sum in advance. However, if they elected for some reason to claim for a lesser sum, or where it is not possible to quantify the maximum sum, it could not by itself render the bankruptcy notice bad in law for the simple reason that it could not possibly affect the correctness of the sum actually owing as at the date of issue of the bankruptcy notice. As far as interest on judgment debt is concerned, the correct sum owing as at the date of issue of the bankruptcy notice (which in the present case was the same as the date named in the notice) could therefore either be the maximum quantified sum or any lesser sum that existed at an earlier date as a judgment debt and available for bankruptcy purposes.

In the circumstances, the bankruptcy notice in this case was not bad in law merely because the quantified sum demanded in the body of the notice was as at 31 March 1988 and not as at the date of issue of the notice, on 8 June 1988.

For reasons given above, we had dismissed this appeal with costs.

Also found at [1991] 1 CLJ 445